FLEXIBLE LIFE INTEREST TRUSTS IN WILLS

Since 2006, life interest trusts created in Wills have been known as 'Immediate Post Death Interests' (IPDI). IPDIs allow for a combination of flexibility and asset protection, which can make them a particularly useful estate planning tool.

IPDIs can be particularly beneficial if you:

- are in a second marriage or civil partnership;
- have children from a previous relationship;
- have a long-term partner but are not married; or
- wish to leave assets to a potentially vulnerable beneficiary; e.g. a child with learning difficulties; someone likely to need long term care or someone who is simply naive with money.

How the IPDI works

IPDI trusts require you to nominate two distinct sets of people who can benefit from the trust:

1. One or more individuals are named as the main beneficiary (the IPDI beneficiary).
2. One or more individuals who can only benefit from the trust once the IPDI beneficiary's rights to benefit cease (known as "the remaindermen" or "remainder beneficiaries" because their right to benefit "remains" after the IPDI beneficiary's rights cease).

Entitlements

The IPDI beneficiary is entitled to any income produced by the assets held in the IPDI trust and they can occupy any property owned by the trust.

The IPDI beneficiary is not entitled to access the capital assets owned by the IPDI trust. Instead, the trustees of the trust (who are people you choose) are in control of those assets and they decide how the assets are invested. The trustees can be guided by a Letter of Wishes produced by you, which accompanies your Will but does not form part of it.

Following the death of the IPDI beneficiary, the capital assets in the trust then pass to the remainder beneficiaries (the 'remaindermen').

Benefits of the IPDI

The main potential benefits of an IPDI trust are as follows:

Control	You choose the trustees of the trust and you can guide them via a Letter of Wishes. In addition, you have control over the choice of the remaindermen, and therefore the eventual destiny of the assets. For example, you can ensure your estate ultimately passes to your children from a previous relationship

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Flexibility	Although the IPDI beneficiary is only automatically entitled to the income produced by the trust assets, if the trust allows it the trustees may use capital for the benefit of the IPDI beneficiary. In addition, or alternatively, the trust can be set up to allow the trustees to use the capital held on trust for other potential beneficiaries, such as the remaindermen.
Asset Protection	The capital assets held in the IPDI trust will not be considered when it comes to calculating the IPDI beneficiary's assets for divorce, bankruptcy or Local Authority means testing exercises etc. Further, as the capital does not belong to the IPDI beneficiary it cannot pass under the terms of their Will.
Loss of capacity	If assets are left to a beneficiary outright and that beneficiary later loses their mental capacity, their estate cannot be properly dealt with unless they have an attorney or a deputy (essentially a Court appointed attorney) in place. However, if assets are left for them in trust, the trustees can continue to deal with the assets even after the beneficiary's loss of capacity.

Taxation of the IPDI

For inheritance tax (IHT) purposes, if the IPDI beneficiary is your spouse / civil partner, full exemption from IHT is available when the IPDI is created on your death. For other beneficiaries, the creation of an IPDI on death will be a chargeable event for IHT purposes and IHT may therefore be payable (depending on the value of the deceased's estate).

On the death of the IPDI beneficiary, and for IHT purposes only, they are treated as having owned the capital assets held in the IPDI (even though the assets do not pass through their estate). Accordingly, the value of the IPDI trust is amalgamated with IPDI beneficiary's own estate for IHT purposes and any IHT due is apportioned between the two sets of estates.

As **income** created during the lifetime of the IPDI trust is paid to the IPDI beneficiary, it is treated as the IPDI beneficiary's income and should be declared by them on their income tax return.

Capital gains are taxed in the hands of the trustees of the IPDI trust and the tax is payable at the trust rate. This would require the Trustees to submit trust tax returns.

How can GL Law help you?

We have specialist lawyers who will take time to get to know you in order to provide you with advice tailored to your specific needs and wishes.

Full and transparent information about our fees structure will be provided at the outset, and the basis of our charging agreed before we begin work.

For more information or to speak to a solicitor please contact us by calling 0117 906 9400 or email hello@gl.law

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